IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NOS. 377 AND 402 OF 2001.

WRIT PETITION NO. 377 OF 2001.

Shri Annapa Shivappa Zamuni
(deceased) by his LRs.
1. Smt. Tulsabai Annapa Zamuni,
   housewife,
2. Shri Chandrakant Annapa Zamuni,
   son, Government Servant,
3. Smt. Akatai Chandrakant Zamuni,
   housewife,
4. Kumari Laxmibai Annapa Zamuni,
   daughter of Annapa,
   All r/o House No. 15(1), Dando,
   Margao, Goa. ... Petitioners.

Versus

1. Smt. Rosalina Souza Carvalho
   (since deceased) through her
   LRs.
a) Kum Autilia Zibuder Arcanjela
   Rita Carvalho,
b) Kum Flora Matildas Perpetua
   Carvalho,
   Both r/o Aquem Alto, Margao, Goa.
2. The Joint Mamlatdar-1,
   Margao, Goa.
3. The Additional Collector,
   South Goa, Margao.
4. The Administrative Tribunal,
   Panaji, Goa. ... Respondents.

WRIT PETITION NO. 402 OF 2001.

Shri Shankarappa Langappa Zamuni
(since deceased) by his LRs.
1. Shri Shivappa Shankarappa Zamuni,
   son, service,
2. Smt. Gangava Shivappa Zamuni,
   housewife,
3. Shri Suresh Shankarappa Zamuni,
   son, service,
4. Smt. Mahadevi Suresh Zamuni,
   housewife,
   All r/o H.No. 16, Dando,
   Margao, Goa. ... Petitioners.

Versus

1. Smt. Rosalina Souza Carvalho
   (since deceased) through her
   LRs.

a) Kum Autilia Zibuder Arcanjela
   Rita Carvalho,
b) Kum Flora Matildas Perpetua
   Carvalho,
   Both r/o Aquem Alto, Margao, Goa.
2. The Joint Mamlatdar-1,
   Margao, Goa.
3. The Additional Collector,
   South Goa, Margao.
4. The Administrative Tribunal,
   Panaji, Goa. ... Respondents.

Mr. S.D. Lotlikar, Senior Advocate with Mr. A.D. Bhobe, Advocate for the Petitioners in both Writ Petitions.

Mr. M.S. Sonak, Advocate for the Respondents in both Writ Petitions.

Coram: P.V. HARDAS, J.

Date: 14th March 2002.

J U D G M E N T

Rule. By consent, rule made returnable forthwith.

2. Both the Writ Petitions are against the common Judgment passed by the Administrative Tribunal, Goa, dated 8th March 2001 in Mundkar Revision Application Nos. 24 and 25 of 1996. These Writ Petitions are, therefore, being decided by this common Judgment.

3. The brief facts necessary for decision of these Writ Petitions are as stated hereunder:-

4. The present respondent no. 1 (since

deceased) issued a notice dated 30th May 1975, calling upon the present petitioners to vacate and handover vacant possession of the premises in their occupation on the ground that the petitioners were in arrears of rent. The present respondent no. 1 thereafter filed an application in December 1975 before the Rent Controller, Margao. The Rent Controller by his separate Orders dated 24th October 1979 in Case No. BLDG/110 of 1975 in respect of the petitioner in Writ Petition No. 377 of 2001 and in Case No. BLDG/111 of 1975 in respect of the petitioner in Writ Petition No. 402 of 2001 had allowed the application for eviction filed by the present respondent no. 1.

5. The petitioner Shri Annapa Shivappa Zamuni (since deceased) in Writ Petition No. 377 of 2001 filed Eviction Appeal No. 92 of 1979 before the Administrative Tribunal, Goa at Panaji challenging the Order passed by the Rent Controller, Margao, dated 24th October 1979. Similarly the petitioner Shri Shankarappa Lagmappa Zamuni (since deceased) in Writ Petition No. 402 of 2001 also filed Eviction Appeal No. 93 of 1979 before the Administrative Tribunal at Panaji challenging the Order passed by the Rent Controller, Margao, dated 24th October 1979.

6. The Administrative Tribunal at Panaji by its

common Judgment dated 7th July 1983 allowed the appeals filed by the present petitioners on the ground that it was the case of the present respondent no. 1 that the premises had been given to the present petitioners on leave and licence basis. The Administrative Tribunal, therefore, held that as the present petitioners were licencees of the present respondent no. 1, the Rent Controller had no jurisdiction to grant the relief. The Administrative Tribunal, therefore, came to the conclusion that the present respondent no. 1 had chosen a wrong forum for redressal of her grievance.

7. Meanwhile the petitioners, who had set up a defence in the rent control proceedings that they were mundcars, filed applications under Sections 4 and 5 of the Mundkar (Protection from Eviction) Act, 1975. The application of the present petitioner Annapa was registered as Mundcar Case No. 1/1989 and the application of the present petitioner Shankarappa was registered as Mundcar Case No. 2/1989. In the applications both the petitioners had stated that they were residing in the suit premises since last more than 24 years continuously and peacefully as mundcars and were respectively paying ground rent of Rs. 16/- per month to the opponent, that is, the present respondent no. 1. It was also stated in the aforesaid applications by the present petitioners that the suit

houses, that is, the dwelling houses had been constructed by each of the petitioners at their own costs nearly 24 years ago. Meanwhile it appears on perusal of the applications of the petitioners that the present respondent no. 1/landlady had filed Civil Suit No. 90/85/C against petitioner Annapa and Civil Suit No. 89/85/D in respect of the petitioner Shankarappa in the Civil Court at Margao. Perusal of the applications further show that in the aforesaid Civil Suits, the present petitioners had filed their written statements claiming ouster of the jurisdiction of the Civil Court on the ground that the petitioners were mundcars.

8. To the applications filed by the petitioners before the Joint Mamlatdar at Margao, the respondent no. 1 herein filed her reply contending that the Administrative Tribunal had already held the present petitioners to be licencees and, therefore, the applications under Sections 4 and 5 filed by the petitioners were not maintainable. It was also stated by the present respondent no. 1 in her reply that the suit structures belonged to her and the same had been constructed by her at her own cost. She had also stated that the house tax was paid by her and the present petitioners had no right of whatsoever nature to claim mundcarship.

9. The Joint Mamlatdar, before whom the present petitioners had filed the aforesaid applications, by his separate Judgment dated 8th September 1994, dismissed the aforesaid applications filed by the present petitioners. In respect of the application of Annapa, the learned Joint Mamlatdar of Salcete Taluka, Margao, Goa, in his aforesaid Judgment held that the present petitioners had failed to prove that the suit houses had been constructed by the petitioners. In respect of Shankarappa's application the learned Joint Mamlatdar also came to the conclusion that Shankarappa had failed to establish and prove that the suit house had been constructed by him. In the earlier part of the Judgment in respect of both the petitioners, the Joint Mamlatdar has examined the case of both the petitioners. According to both the petitioners they had constructed the suit houses with the consent of the landlady and were residing in the suit houses by paying monthly ground rent. The case of the respondent no. 1 herein was that the suit houses were constructed by her and both the petitioners were paying licence fees to her. Perusal of the Judgment of the Joint Mamlatdar in respect of both the petitioners shows that the Joint Mamlatdar has appreciated the evidence and has recorded a finding of fact that both the petitioners had failed to establish that the suit houses were constructed by them and that they were paying ground rent. Thus, the

learned Joint Mamlatdar held that both the petitioners were not mundcars.

10. Petitioner Shankarappa in Writ Petition No. 402 of 2001 and petitioner Annapa in Writ Petition No. 377 of 2001, being aggrieved by the Judgment of the Joint Mamlatdar, filed appeals before the Additional Collector, South Goa at Margao. The appeal of Shankarappa was registered as Case No. 43-94/Mund/APL/AC while appeal of petitioner Annapa was registered as Case No. 44-94/Mund/APL/AC. Both the appeals were decided by the Additional Collector by his common Order dated 9th July 1996. At internal page 4 of the Judgment, the learned Additional Collector has referred to the evidence of Shankarappa in which Shankarappa had stated as under:-

> "Myself and my wife had gone to the opponent for talks. Shri Annapa (applicant in other case) was also with us. There were two structures, namely, one occupied by me and the other occupied by Annapa, when we went for talks with the opponent. (This is in respect of case No. JM-I/2/MUND/89)."

The learned Additional Collector then makes a reference to the further evidence in the aforesaid case. At page 6 of the Judgment of the Additional Collector, the Additional Collector makes a reference and discusses the findings of the learned Joint Mamlatdar. The

Additional Collector on re-appreciation of the evidence endorses the findings of the Joint Mamlatdar.

11. Both the petitioners, being aggrieved by the Order of the Additional Collector, filed Revision Applications before the Administrative Tribunal, Goa. The revision of petitioner Annapa was registered as Mundcar Revision Application No. 24/96 while the revision of petitioner Shankarappa was registered as Mundcar Revision Application No. 25/96. The Administrative Tribunal by its common Judgment dated 8th March 2001 dismissed the revisions. Both the petitioners, being aggrieved by the aforesaid Judgment of the Administrative Tribunal, have filed the present petitions.

12. Mr. Lotlikar, the learned senior advocate appearing for both the petitioners, has urged before me that the appellate Court as well as the Administrative Tribunal have not appreciated the evidence and the appellate Court was swayed by the admissions which have been made by Shankarappa. According to Mr. Lotlikar, the learned senior advocate for the petitioners, the failure of the petitioners to prove that the houses had been constructed by them would not oust them from the definition of mundcar. According to Mr. Lotlikar, it was enough for the petitioners to have established that

they were residing in the suit houses with a fixed habitation in dwelling houses with the consent of the respondent no. 1. Therefore, according to the learned senior advocate for the petitioners, the question as to who had constructed the houses pales into insignificance. It is also urged before me, relying on the exception to Section 2(p) of the Mundcar Act, that the petitioners had filed the rent control proceedings which were dismissed by the appellate Court, and as such, it cannot be said that the respondent no. 1 had initiated any proceedings one year prior to the appointed date. According to him, since the proceedings were dismissed by the appellate Court, the proceedings though initiated one year prior to the appointed date, the respondent no. 1 did not succeed in obtaining a decree for eviction.

13. Mr. Sonak, the learned counsel appearing for the respondent no. 1, has urged before me that three Courts below have held that the petitioners have not succeeded in proving that they are mundcars and such finding of fact, which has been recorded on appreciation of evidence, cannot be interfered with in the writ jurisdiction.

14. Both the petitioners in their applications had stated that they had constructed the houses with

the consent of the respondent no. 1 landlady. This is the pivot of the petitioners' case. By making such averment, the petitioners sought to establish that the suit houses had been constructed by them from out of their own funds and, therefore, the amount of Rs. 16/- per month was paid by them as ground rent and not by way of rent or licence fee. The authorities below on appreciation of the evidence have come to a conclusion that the petitioners had been unsuccessful in their attempt to establish that the suit houses had been constructed by them. The amount of Rs. 16/- which was paid by them was obviously either as rent or as licence fee. Once it is established that the petitioners are paying some amount as rent/licence fee, the petitioners fall in the exception (1) to Section 2(p) of the Mundcar Act. The authorities below, according to me, were perfectly right in addressing themselves to the question as to whether the petitioners had constructed the suit houses from out of their own funds. This finding of the authorities below has been arrived at after appreciating the evidence of the petitioners and their witnesses and that exercise of appreciation of evidence cannot be faulted in writ jurisdiction. A writ Court cannot be called upon to re-appreciate the evidence and arrive at a finding different to the findings arrived at by the authorities below. Therefore, according tome, both the petitions fail on

this short point alone.

15. It is next urged before me that Section 2(p)(i) reads as under:-

> "(i) a person paying rent to the bhatkar for the occupation of the house".

Thus on plain reading of Section 2(p)(i) a person paying rent to the bhatkar for the occupation of the house is excluded from the definition of mundcar in the Mundcar Act. It is urged by Mr. Lotlikar, the learned senior advocate for the petitioners that since the petitioners were held to be licencees, the amount that they were paying is licence fee and not rent and, therefore, no reliance can be placed on the aforesaid exception. The entire scheme in the definition of mundcar is that a person occupies the premises as a dwelling house with the consent of the bhatkar/owner. The residence as a dwelling house should be a fixed habitation. This would mean that the bhatkar consents to a person to occupy the premises as a dwelling house for a fixed habitation. Obviously such occupation by the person with the consent of the bhatkar is without payment of any charges for the occupation for a person to be called a mundcar. The four exceptions clearly exclude a person who is paying rent, a domestic servant or a chowkidar who is paid wages, a person employed in

mill, factory, mine, workshop or commercial establishment and is residing in the premises belonging to the owner in connection with his employment and a person who is residing as a caretaker. Thus the Legislative intent is to firstly exclude persons who are paying any charges for the occupation of the premises and secondly is to exclude certain persons whether paying charges for the occupation or not whose occupation of the premises is by virtue of the employment or as a caretaker.

16. Thus, a person, who is paying rent to the bhatkar and whose eviction is sought, cannot set up a defence that he is a mundcar as Clause (i) of Section 2(p) excludes the person who is paying rent to the bhatkar from the definition of mundcar. By necessary implication, therefore, what is contemplated in Section 2(p) in the definition of mundcar is a person who is lawfully residing with fixed habitation in a dwelling house with the consent of the bhatkar. This occupation by the mundcar, which, may be with or without obligation to render any services to the bhatkar, is without payment of any charges for the occupation and is not excluded by Clauses (ii), (iii) and (iv) of Section 2(p). Thus, a person paying rent to the bhatkar is excluded from the definition of mundcar as the period of occupation on payment of rent can be

determined and as the occupation is in pursuance to a contract of tenancy. The person occupying the premises as a tenant pays a fixed amount to the owner as 'rent' for the use and occupation of the premises. A licencee also occupies the premises on payment of fixed amount as licence fee for the use and occupation of the premises. The occupation by the licencee is also in pursuance to a contract or agreement of licence. Therefore, according to me, by virtue of Section 2(p)(i) a person who pays charges for the use and occupation of the premises is not included in the definition of mundcar. Since a licencee pays charges/licence fee for the use and occupation of the premises, according to me, would also be excluded from the definition of mundcar. Therefore, according to me, the word 'rent' in Section 2(p)(i) would also include licence fee.

17. The next submission of Mr. Lotlikar, the learned senior advocate appearing for the petitioners, is that no doubt legal proceedings for eviction of the petitioners were initiated within one year prior to the appointed date, the legal proceeding were dismissed by the appellate Court on the ground that the petitioners were not tenants of the respondent no. 1 but were licencees. No doubt the proceedings were dismissed. However, the dismissal of the proceedings was not on

merits but was on the ground that the Rent Controller had no jurisdiction to decide the dispute as no relationship of landlord and tenant was established between the petitioners and the respondent no. 1. The respondent no. 1 thereafter filed a civil suit on the ground that the petitioners were licencees and the said Civil Suit was decreed. Thus, it cannot be said that the proceedings did not culminate in the passing of a decree. The original proceedings were dismissed for want of jurisdiction and there was no decision on merits. The Civil Suit, therefore, would relate back and it can be said that the bhatkar had initiated legal proceedings for eviction within one year prior to the appointed date.

18. Mr. Sonak states before the Court that even the appeals filed by the petitioners challenging the decree of the Civil Court have been dismissed.

19. After giving my anxious consideration to the rival submissions made before me, I am of the view that the petitioners have failed to establish that they had constructed the suit houses. Their contention that they were paying Rs. 16/- per month to the respondent no. 1/landlady as ground rent has not been established. In fact Annapa in his evidence stated as under:-

> "As said house was not sufficient I approached the opponent I am paying rent of the suit house to the opponent and the opponent pays the house tax but I say the opponent not issuing rent receipt."

Shankarappa in his evidence stated as under:-

> "The suit house is registered in the Margao Municipal Council, it is true that because the suit house belongs to the opponents the same is registered in the Margao Municipal Council in the name of the opponent.
>
> It is true the amount of Rs. 16/- which is being paid by me to the opponent is paid as rent for the suit house. It is true that the house occupied by me and the house occupied by Annapa Zamuni were constructed by the opponent."

Both the petitioners in their cross-examination have accepted that they were paying rent for the suit houses. Therefore, their contention that they were paying ground rent to the respondent no. 1/landlady is falsified.

20. In the result, therefore, there is no merit in the aforesaid petitions and the petitions are dismissed with no order as to costs. Rule issued stands discharged.

(P.V. HARDAS)
JUDGE.

ed's.